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 TRAFFICSCHOOL.COM, INC. and
 DRIVERS ED DIRECT, LLC, California companies.

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC.,
 a California corporation; DRIVERS ED
 DIRECT, LLC, a California limited
 liability company,

Plaintiffs,

vs.

EDRIVER, INC., a California
 corporation; ONLINE GURU, INC.,
 FIND MY SPECIALIST, INC., and
 SERIOUSNET, INC., California
 corporations; RAVI K. LAHOTI, an
 individual; RAJ LAHOTI, an individual;
 and DOES 1 through 10,

Defendants.

Case No. CV 06-7561 PA (CWx)

The Honorable Percy Anderson

PLAINTIFFS' **COUNTER-**
DESIGNATIONS TO DEFENDANTS'
 DEPOSITION DESIGNATIONS OF
 CROSS EXAMINATION OF DR.
 MARONICK

Trial: Nov. 6, 2007

1 Plaintiffs hereby submit their Counter-Designations for completeness of the
2 Cross-Examination Designations of Dr. Maronick. Plaintiffs note that while they
3 dispute many of the Defendants' *characterizations* of Dr. Maronick's testimony as set
4 forth in Defendants' "Summary of Deposition Testimony for Cross-Examination of Dr.
5 Maronick by Subject Matter," where the testimony itself is properly referenced (i.e.,
6 by page and line number), the disputed *characterization* of it is simply argument by
7 Defendants and thus is not addressed by Plaintiffs herein.

8 **A. Defendants' Designations and Plaintiffs' Counter-Designations:**

9 1. *Defendants' Designation:* Pp. 50:14-50:24 (relating to net impression of
10 ad).

11 **Plaintiffs' Counter-Designations:** Pp. 49:8-50:13 (context is relating to
12 FTC Advertising Copy Tests).

13 2. *Defendants' Designation:* Pp. 198:23-199:12 (relating to "footnote
14 disclaimers").

15 **Plaintiffs' Counter-Designations:** Pp. 198: 9-22 (relating to Dr.
16 Maronick's experience about consumers not reading "footnote disclaimers").

17 3. *Defendants' Designation:* Pp. 49:2-19; 75:13-23; 50:25-51:15; 70:19-
18 71:12; 72:12-20; 80:18-23 (relating to use of "control ad").

19 **Plaintiffs' Counter-Designations:** Pp. 74:25-76:13 (relating to why in
20 this case a control ad was *not* appropriate).

21 4. *Defendants' Designation:* Pp. 78:1-24 (relating to Dr. Maronick's
22 problems with CAR.ORG as a proper control ad).

23 **Plaintiffs' Counter-Designations:** Pp. 77:13-25; 80:25-81:5 (relating to
24 Dr. Maronick's problems with CAR.ORG as a proper control ad).

25 5. *Defendants' Designation:* Pp. 54:7-10 (relating to use of leading
26 questions being a problem in a survey).

27 **Plaintiffs' Counter-Designations:** Pp. 54:11-56:15 (relating to Dr.
28 Maronick's use of an open-ended, non-leading question "Whose Web site do you

1 think this is?" before asking any closed-ended questions).

2 6. *Defendants' Designation:* Pp. 41:22-42:19 (relating to Dr. Maronick's
3 use of the funneling approach in this case).

4 **Plaintiffs' Counter-Designations:** Pp. 42:20-22 (relating to the funneling
5 approach being proper in this case).

6 7. *Defendants' Designation:* Pp. 45:17-46:22 (relating to Dr. Maronick's
7 procedure regarding instructing respondents about guessing).

8 **Plaintiffs' Counter-Designations:** Pp. 46:23-48:3 (relating to guessing
9 and the option of respondents to select "don't know" and thus not give an answer).

10 8. *Defendants' Designation:* Pp. 103:6-12; 110:18-20 (relating to
11 reading/memory tests).

12 **Plaintiffs' Counter-Designations:** Pp. 103:13-18; 110:21-111:3 (relating
13 to having respondents look at stimuli and react to it as being appropriate).

14 9. *Defendants' Designation:* Pp. 102:22-103:5 (relating to reading/memory
15 tests).

16 **Plaintiffs' Counter-Designations:** Pp. 103:6-12 (relating to having
17 respondents look at stimuli and react to it as being appropriate).

18 10. *Defendants' Designation:* Pp. 137:23-138:13 (relating to college
19 students' goals with traffic tickets).

20 **Plaintiffs' Counter-Designations:** Pp. 138:22-23 (relating to Dr.
21 Maronick's express statement that he "can't speculate what would be the factors
22 important to [college students]).

23
24 DATED: November 12, 2007 LEWIS BRISBOIS BISGAARD & SMITH LLP

25
26 By 

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|--------------------------|---|---------------|
| TRAFFICSCHOOL.COM, INC., |) | |
| etc., et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | CASE NO. |
| |) | CV 06-7561 PA |
| EDRIVER, INC., et al., |) | (CWx) |
| |) | |
| Defendants. |) | |

DEPOSITION OF THOMAS MARONICK, DBA

August 16, 2007

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1 A. Twenty-one, yes.

2 Q. Simonson quotes -- or says, "As

3 Professor McCarthy points out, survey questions must not

4 be slanted or leading, and it is improper to suggest a

5 business relationship when the respondent might

6 previously have had no thought on such a connection."

7 Do you see that?

8 A. Yes.

9 Q. Do you generally agree with those statements?

10 A. I agree with the statement that a survey

11 question must not be slanted or leading. Yes. I agree

12 with that.

13 Q. Do you believe it's improper to suggest a

14 business relationship when the respondent might

15 previously have no thought on such a connection?

16 A. I agree with that.

17 Q. And did you follow those principals, in your

18 view --

19 A. I believe I did, yes.

20 Q. -- in this study?

21 A. Yes, I did.

22 Q. So you believe that your Question 6, where you

23 ask, "Is this Web site endorsed by any government

24 agency," is not a leading question?

25 A. Again, Question 6 follows Question 5 where they

1 were asked, first of all, what government agency. So by
2 getting -- if a respondent says that it is the
3 Department of Motor Vehicles, then they were likely in
4 that question to say, "Yes, it was."

5 And so I don't believe it's leading because
6 you're really focusing on responses after the open-ended
7 questions.

8 Q. So you don't believe Question 6 is a leading
9 question?

10 A. No. Again, because it follows Question 5. ...
11 It's what's called a "funneling approach," and I don't
12 believe it's a lead-in question at all.

13 Q. Funneling. Now, regardless of what answer
14 someone gives to 5, they're still going to answer 6;
15 correct?

16 A. That's correct.

17 Q. So there is no screening out of people from 5
18 to 6; correct?

19 A. That's correct.

20 Q. So does the word -- does the funneling concept
21 really apply in that case?

22 A. Yes, it does.

23 Q. Are you familiar with the concept of "demand
24 effects" --

25 A. Yes.

1 thinking about question -- Question 6, "Is this endorsed
2 by a government agency?" I want them to be thinking
3 about that.

4 Q. No, sir. My question was you want them to be
5 thinking about Question 7 while they're answering
6 Question 6. Isn't that true?

7 A. No. I want them to be thinking about the Web
8 site. The Question 6 asks a very straightforward
9 question, "Is this Web site endorsed by a government
10 agency?" That's a discrete question.

11 And then knowing that if they say "yes," or
12 when they say "yes" to that, they're going to be asked
13 what government agency.

14 Q. When they say "yes"; right?

15 A. That's correct. If they say "yes." If they
16 say "yes," not when. If they say "yes."

17 Q. Will you look at page 10 of Dr. Simonson's
18 report, paragraph 24.

19 A. Yes.

20 Q. He cautions, "Accordingly," in the second
21 sentence, "it is a standard survey procedure to
22 explicitly instruct respondents not to guess, and such
23 an instruction decreases, though does not eliminate, the
24 tendency to guess."

25 Do you agree with those general principals?

1 A. It depends on the nature of the survey.

2 Q. You gave no such instruction in this case;
3 correct?

4 A. Again, because of the nature of the survey.

5 Q. Just yes or no.

6 A. No. I did not give it because of the nature of
7 the survey.

8 Q. So you think in some surveys it's not a
9 standard procedure to explicitly instruct respondents
10 not to guess as to the answer?

11 A. That's correct.

12 Q. Now, in this survey you thought that procedure
13 would be inappropriate?

14 A. I thought it was unnecessary because of the
15 nature of the study, which is a perception study. This
16 isn't -- you normally would ask -- tell a respondent not
17 to guess if you're asking factual questions from an ad.
18 Here I'm asking simply for their perceptions of what
19 they see or take away from the -- in this case either
20 the Web page or the Internet link. So I don't believe
21 it's appropriate or necessary to say -- to tell them not
22 to guess.

23 Q. This Question 6 -- isn't that a factual
24 question, "Is this Web site endorsed by any government
25 agency?"

1 A. I think that's still a perception. Again, it
2 follows Question 5, which is, "Whose Web site is this?"
3 And then the -- in their perception, is this endorsed by
4 a government agency.

5 So I believe these -- this -- both of these --
6 this whole series -- 5, 6, 7 -- is measuring their
7 perceptions of, A, whose Web site it is, and then their
8 perception of whether it's endorsed by a government and
9 what government agency. So I believe that's a
10 perception statement.

11 Q. And not factual inquiries?

12 A. What's that?

13 Q. So you believe these questions 5, 6, and 7 are
14 not factual inquiries?

15 A. No, I don't. I believe they're perceptions.

16 Q. And because they're perceptions, you believe it
17 was appropriate to exclude an instruction not to guess?

18 A. Because if you -- when you say to someone not
19 to guess, what you're normally doing -- again, it's
20 going to be in a factual situation.

21 And secondly, it's going to be in a situation
22 where the respondents don't see the response options
23 open to them. And here they have open to them; that
24 they see the "don't know" response category as an
25 option.

1 And in my experience, when someone sees that,
2 if they don't have an answer, rather than give one, they
3 have the option of saying "don't know."

4 Q. And in constructing Question 6 and Question 8,
5 which is a similar question, the first response in each
6 case is "yes"; correct?

7 A. That's correct.

8 Q. And that did not vary across respondents. In
9 other words, some respondents wouldn't see "don't know,
10 not sure" as the first response; correct? Everyone saw
11 "yes" as the first response?

12 A. The generally accepted procedure is always
13 "yes," "no," "don't know, not sure."

14 Q. I'm just trying to get -- to figure out what
15 people saw first. Every single person that took
16 Survey 3 saw "yes" as the first choice?

17 A. That's correct.

18 Q. For 6 and 8?

19 A. That's correct. Which is the generally
20 accepted procedure of format for a yes/no question.

21 Q. Do you know whether it's possible within the
22 Zoomerang format to have them rotate the choices of
23 response?

24 A. Yes. It is possible.

25 Q. And you chose not to do that?

1 A. That's correct.

2 Q. Did you write an article entitled "Advertising
3 Research Issues from FTC versus Stouffer Foods
4 Corporation"?

5 A. Yes, I did.

6 Q. I'll show you a document which we'll have
7 marked for identification as 143.

8 (Exhibit 143 was marked for
9 identification by the reporter and is
10 attached herewith.)

11 BY MR. DAUCHER:

12 Q. Sir, can you confirm for me that 143 is a
13 correct copy of the article I referenced, "Advertising
14 Research Issues from FTC versus Stouffer Foods
15 Corporation"?

16 A. Yes.

17 Q. And it lists you as an author. So you were an
18 author of this article; correct?

19 A. That's correct, yes.

20 Q. It was published in 1995. Have survey
21 standards changed dramatically since then?

22 MR. MAKOUS: Objection. Vague as to
23 "dramatically." Argumentative.

24 THE WITNESS: Have research issues changed?
25 Research methodologies have changed because of the

1 advent of the Internet, which was not predominant in
2 1995.

3 BY MR. DAUCHER:

4 Q. In terms of the conclusions of the article,
5 though, have any of these conclusions been, to your
6 knowledge, discredited since the time of the publication
7 of this article?

8 A. I don't recall what the conclusions were.

9 Q. Well, will you look to page 302 of the article,
10 which is the second page of this exhibit, in the
11 right-hand column, it says: "General Standards for FTC
12 Advertising Copy Tests."

13 A. Yes.

14 Q. It says, "The standard the Commission uses in
15 evaluating advertising claims is the," quote, "'overall
16 net impression made by the ad,'" unquote.

17 Do you see that?

18 A. Yes.

19 Q. Do you agree with that?

20 A. Yes.

21 Q. And do you agree that in the context of a false
22 advertising case, that that is the proper standard to be
23 applied?

24 A. The overall net impression, yes.

25 Q. On page 303, under "Design Issues," the first

1 responses are tabulated, but I was able to go through
2 and see if there were any problems with it with the
3 different skip patterns. I also had made it possible
4 for counsel to look at it to see if they saw any
5 problems with it. Again, not to change content, but
6 just to make sure the procedures are correct.

7 Q. And you would agree, based on your writing,
8 that leading questions would be a problem in a survey;
9 correct?

10 A. That's correct.

11 Q. But your contention is that this survey does
12 not contain leading questions? Survey 3?

13 A. That's correct. As I said numerous times now,
14 because of two things. Number one, it follows
15 Question 5, which is an open-ended question. And
16 Question 6 simply asks a very straightforward -- six --
17 yes -- "Is it endorsed by a government agency," with the
18 option of them saying "no" or "don't know."

19 Q. And you also wrote in the final paragraph,
20 above "Experience Counts," on page 303, that it is -- or
21 quoted the ALJ that, "It is not appropriate to start a
22 copy test with closed-ended questions"; correct?

23 A. Yes. And that's why my study started with the
24 open-ended question.

25 Q. In your opinion.

1 MR. MAKOUS: In anyone's opinion, Counselor.

2 THE WITNESS: Question 5 --

3 BY MR. DAUCHER:

4 Q. A throw-away open-ended question. Is that a
5 good faith?

6 A. I'm sorry. I'm sorry.

7 Q. Let me ask the questions, and you can give the
8 answers. If you want -- if your counsel wants to ask
9 you some questions afterwards, then he can do that.
10 Okay?

11 A. That's fine.

12 Q. Your opinion is that Question 5 is starting
13 this survey with an open-ended question and that,
14 therefore, you have license to go ahead and ask
15 closed-ended questions from that point forward in the
16 survey; correct?

17 MR. MAKOUS: Objection. Asked and answered.
18 Argumentative. Vague as to "license."

19 THE WITNESS: It is -- it's my judgement that
20 you start with an open-ended question like that, and the
21 responses to that then lead to the -- or then you have
22 closed-end, what are called "directed questions," that
23 follow that.

24 BY MR. DAUCHER:

25 Q. Is that --

1 A. And just because it's a closed-end question
2 doesn't necessarily make it a leading question. Those
3 two terms are not synonymous.

4 Q. And your opinion is that "Whose Web site do you
5 think this is" is an open-ended question?

6 A. Yes. That's Question 5.

7 Q. Doesn't it lead them to the question of
8 association in the advertisement?

9 MR. MAKOUS: Objection. Vague and ambiguous.

10 THE WITNESS: I don't think it leads them to
11 anything. It simply asks them what is their net
12 impression of the ad -- I'm sorry -- the Web page, whose
13 Web site is this, whose Web site do you think this is.
14 It's asking for their net impression of whose Web site
15 it is.

16 BY MR. DAUCHER:

17 Q. You're assuming that in the context of viewing
18 that page that the viewer is building into their net
19 impression an idea of whose Web site it is that they're
20 looking at; is that right?

21 A. I'm sorry. I don't understand your question.

22 MR. DAUCHER: Can you read it back, please.

23 (The record was read.)

24 THE WITNESS: Yes. That's what the question
25 before it -- "Please review this as you would if you

1 Q. On the right-hand side now.

2 A. Okay. All right. Well, you have to show me

3 where you were.

4 Q. I'm in the first paragraph, about five, six

5 lines down. And now I'm quoting Stouffer. Okay?

6 You're just summarizing what Stouffer argued here. So

7 I'm not attributing this to you.

8 A. Okay. Okay.

9 Q. But I'm quoting Stouffer as having argued that,

10 "The FTC has made abundantly clear that a control ad is

11 required to be used for both open-ended and closed-ended

12 questions."

13 Stouffer presented that argument; correct?

14 A. Yes.

15 Q. But the commission did not accept -- the ALJ

16 did not accept that view; correct? In Stouffer?

17 A. That's correct.

18 Q. Instead -- well, it's a little weird.

19 In the second paragraph here it says, "In its

20 decision in Stouffer Foods, the Commission indicated" --

21 shouldn't that be the ALJ indicated?

22 A. Yes.

23 Q. Because ALJ is the one making the decision?

24 A. That's correct.

25 Q. Okay. So the ALJ indicated that there was

1 nothing requiring a control ad for open-ended questions;
2 correct?

3 A. That's correct.

4 Q. However, you concluded this paragraph with this
5 statement, "However, it is noteworthy that this
6 standard, namely, that a control ad is not necessary, is
7 likely to be inconsistent with certain --

8 A. Wait, wait, wait. Where are you now?

9 Q. The last sentence on this page?

10 A. Okay.

11 Q. Let me start over.

12 A. I'm with you. Okay.

13 Q. You ended this section with the statement,
14 "However, it is noteworthy that this standard, namely,
15 that a control ad is not necessary, is likely to be
16 inconsistent with certain Lanham Act cases involving
17 exploiting misleadingness, in which the court has said
18 that," quote, "'a control mechanism would likely be,'"
19 quote, "'indispensable,'" unquote; correct?

20 A. Yes.

21 Q. You were aware of that authority when you
22 constructed your survey; correct?

23 A. That's correct. And you might just -- and you
24 might also go on in the next page, on page 306, is where
25 I identify some of the problems with having a control.

1 As I said on page 306, "In practice, difficult
2 trade-offs and decisions must be made in selection of an
3 appropriate control ad."

4 Q. All right.

5 A. In practice, the situation may arise when
6 almost everything in the ad is part of the -- a
7 challenged claim. Therefore, in effect, you can't have
8 a control.

9 And that's really the kind of issue that I
10 was dealing with here -- my inability to create a
11 control that -- that meets -- as I said, met the test
12 of appropriate -- or excuse me -- proper and
13 equivalent.

14 Q. In your notes, when you were engaged in this
15 matter, you wrote down what you were told from
16 Mina Hamilton about this case; correct?

17 A. Yes.

18 Q. All right. I'm just going to put it in front
19 of you.

20 And isn't it true, sir, what you were told was
21 that they believed that the DMV.org name misled people
22 as to an affiliation with the government?

23 A. That's what they said, and that was what was in
24 the amended complaint that I reviewed.

25 Q. And you were never told about any other

1 misleading content from the DMV.org Web site itself;
2 correct?

3 A. I'm not sure I understand your question.

4 Q. In other words, they told you that the name was
5 misleading. We've established that. But they didn't
6 identify any other misleading claims?

7 A. Again, looking at my notes from 4-24, they had
8 said DMV.org suggests it is an official state DMV Web
9 site. They didn't say it is misleading. They said it
10 suggests that.

11 Q. By the use of the name "DMV.org"?

12 A. That's correct.

13 Q. So isn't it true that by changing the name
14 DMV.org to something else, that you could establish a
15 control that purges the potentially misleading claim?

16 A. If you can find one that meets the tests of
17 being proper and equivalent. That was -- that's what
18 I've been saying all morning; that you simply can't take
19 out -- take that out and put something else in and --
20 and it automatically, quote/unquote, "purges" it. It
21 simply becomes then a word association. It really -- it
22 doesn't purge it unless it is something that is proper
23 and equivalent.

24 And that's where my problem was, that -- that I
25 couldn't think of anything that met those standards.

1 Q. So in your -- you're aware that Hollander
2 created a control for his survey; correct?

3 A. Yes, I am.

4 Q. And you know exactly what he did to establish
5 that control, namely, substituting Car.org for DMV.org
6 everywhere it appeared?

7 A. Yes.

8 Q. Correct?

9 A. Yes.

10 Q. And that doesn't meet your test of a proper
11 control?

12 A. No, it does not.

13 Q. And why not?

14 A. Because it's neither -- it's not equivalent. I
15 mean, it's not -- it -- again, remember, the target
16 market for online traffic schools is people who would
17 consider going to those. So it had to be something that
18 is somehow related to traffic schools or online traffic
19 schools. And I don't believe that car- -- or Cars.org
20 is something that a consumer, if they were looking for
21 an online traffic school, would think, "Gee, that's the
22 Web site," or the Internet link that they would use to
23 go to find a traffic school. So I don't believe it's
24 appropriate or equivalent at all.

25 Q. If it's not an appropriate control, then the

1 procedures that led to those results.

2 BY MR. DAUCHER:

3 Q. Well, he did remove the potentially misleading
4 claim from the control group; correct?

5 A. He substituted Car.org for the DMV.org, yes.

6 Q. And thereby removed the potentially misleading
7 claim?

8 A. He substituted Car.org for that, yes.

9 Q. Now, you wrote on this page 306, in the first
10 full paragraph, on the second column --

11 MR. MAKOUS: Page 306?

12 MR. DAUCHER: Yes.

13 THE WITNESS: Okay.

14 BY MR. DAUCHER:

15 Q. That -- for example, the first approach in
16 that refers to purging the misleading claim; correct?

17 A. Yes.

18 Q. You wrote that, "The first approach, using the
19 purged or cleansed ad control, may be the best choice
20 when the control ad is virtually identical to the
21 challenged or test ad, with the exception that the
22 challenged claim is excised"; correct?

23 A. Yes.

24 Q. Isn't that exactly what Hollander did in this
25 case?

1 A. No. I don't believe so. He substituted
2 something else that, in my judgment, is likely to
3 confuse consumers, make -- as I said more than once this
4 morning, in my judgment, it doesn't meet the test of a
5 proper control.

6 Q. Because consumers looking at a Car.org control
7 are also going to draw an affiliation to the government
8 in your view?

9 A. I don't know what they're going to do.

10 MR. MAKOUS: Let's take a break, Counsel.

11 MR. DAUCHER: There's a question pending.

12 MR. MAKOUS: We've been going two hours.

13 MR. DAUCHER: Let him finish the question
14 then.

15 MR. MAKOUS: All right. Let me just hear the
16 question back.

17 (The record was read.)

18 THE WITNESS: I don't believe they are. As a
19 matter of fact, I don't -- I can't imagine that they're
20 going to be making any kind of an affiliation to -- to
21 any government agency.

22 BY MR. DAUCHER:

23 Q. Let me -- just one follow-up, please.

24 Wouldn't then that indicate that the use of
25 Car.org would be an effective control in this case

1 stimuli before the viewer, but not in Study 3?

2 A. Because Study 3, I think, was -- it would have
3 made it a memory test.

4 Q. To leave the --

5 A. No -- I'm sorry.. I'm sorry -- it would have
6 made it -- would made it -- to have -- would have made
7 it into simply a reading -- reading test.

8 Q. Are you familiar with the authority that's been
9 published in Trademark Reporter about reading and memory
10 tests?

11 MR. MAKOUS: Objection. Overbroad.

12 BY MR. DAUCHER:

13 Q. Let me lay some foundation.

14 Do you know what the Trademark Reporter is as a
15 journal?

16 A. Yes.

17 Q. Do you subscribe to it?

18 A. No.

19 Q. Have you read the articles in there related to
20 reading and memory tests published in the last year?

21 A. No, I have not.

22 Q. When, in your view, is it appropriate to do a
23 reading test versus a memory test?

24 A. I don't believe it's ever appropriate to do a
25 reading test. I think it should always be a memory test

1 where the stimuli is taken away, at least in the
2 first -- if you want someone to look for a specific
3 aspect of a claim, that's certainly appropriate on a
4 second exposure to have a reading test. But the first
5 test, it should be without the stimuli present.

6 Q. But in Study 2 the stimuli is present. So you
7 do conduct a reading test in Study 2?

8 A. Again, because of the nature of the stimuli,
9 which is simply a straightforward Internet link, it
10 doesn't have -- it doesn't make any express or implied
11 claims other than here is a link coming right off of a
12 Google search page. It simply makes that statement.

13 Q. Didn't you just testify that a reading test was
14 never appropriate in your view?

15 A. I said that it's -- there are times when you
16 would do -- when what you want them to do is look at the
17 stimuli and react to it. And that's what I had them do
18 in Study 2.

19 Q. Isn't it true, in the context of surveys, that
20 a reading test is generally more appropriate with a
21 higher involvement decision?

22 MR. MAKOUS: Objection. Vague. Lacks
23 foundation.

24 THE WITNESS: No. I don't believe that -- that
25 a reading test, if -- even if it's a high involvement

1 notice the disclaimers; correct?

2 A. Yes. That's correct.

3 Q. And so you didn't want to do a reading test,
4 did you?

5 A. That's not the reason I didn't want to do it.
6 I wanted to do it because I was looking to measure
7 consumers' perceptions of the Web site, not to gather
8 any particular information. And the way -- the only way
9 you can do a perception study, as opposed to a memory
10 study, is by taking the stimuli away.

11 Q. You're drawing a distinction now between a
12 perception study and a memory study?

13 A. They are really the same thing. But, again,
14 what I was trying to get from them is really
15 perceptions, not what they remembered, but what was the
16 net impression that they drew, having looked at this Web
17 site.

18 Q. And you were okay with doing a reading test as
19 to the Google search result; correct?

20 A. That's correct.

21 Q. And the reason is because you didn't see an
22 express disclaimer in the Google search result; correct?

23 A. That's not the reason, no. I simply -- I did
24 it simply because it provided basic information about a
25 Web site link or a Web link that didn't provide any kind

1 of claims whatsoever, positive or negative. It simply
2 said, "Here is a Web site. Whose Web site" -- excuse
3 me -- Internet link. "Whose link is that?"

4 Q. Your client testified in deposition that prior
5 to making a purchase on --

6 MR. MAKOUS: He doesn't have a client. You
7 mean plaintiffs?

8 MR. DAUCHER: Yeah. He does have a client.
9 He's engaged in the case.

10 MR. MAKOUS: He's engaged --

11 MR. DAUCHER: Okay.

12 MR. MAKOUS: No. He does not have a client.

13 MR. DAUCHER: Fine. I don't care.

14 BY MR. DAUCHER:

15 Q. Plaintiffs have testified in this case that
16 prior to making a purchasing decision on their Web
17 sites, a visitor spends three to ten minutes and sees
18 more than five different pages.

19 Does that surprise you?

20 MR. MAKOUS: Okay. Objection.

21 Mischaracterizes the evidence. Assumes facts not in
22 evidence. Calls for speculation. Argumentative.

23 THE WITNESS: I really haven't thought about
24 it. I'm not aware of that testimony, and I haven't
25 thought about it.

1 A. Oh, no. No. About 30 years, 25 years.

2 Q. You have a pretty good insight, I suspect, into
3 the mind-set of college-age students; correct?

4 A. I'm not sure anybody has that, but certainly I
5 have had a lot of experience with college students.

6 Q. Now, based upon that experience, wouldn't you
7 say that if I, a college student, faces a ticket, then
8 their goal is to get out of that ticket as cheaply and
9 quickly as possible?

10 A. Typically, that would be the way that they
11 would do it. You know, what -- you know, what's it
12 going to cost me? How long until I can get it behind
13 me?

14 Q. And so long as that -- if that involved traffic
15 school, isn't it true -- wouldn't it be reasonable to
16 say, with that mind-set in mind, that the only thing
17 they would care about, with respect to the state, was
18 whether the state would accept their having gone to a
19 particular program?

20 MR. MAKOUS: Objection. Speculative. Lacks
21 foundation.

22 THE WITNESS: I can't speculate what would be
23 the factors important to them.

24 BY MR. DAUCHER:

25 Q. Beyond -- okay. The words "recommended by the

1 A. Relates to paragraph 49.

2 Q. And now this covers Survey 3, to be clear?

3 A. Yes.

4 Q. Okay.

5 A. His comment, "They were then presented with
6 part of the Web page, excluding pertinent disclaimers
7 that appear at the bottom of the page." And then he
8 quotes what I said.

9 And my annotation is, quote, "Consumers don't
10 read footnote disclaimers. Material below not related
11 to traffic schools."

12 And that was -- goes back to my experience at
13 the FTC and all the studies that I've done that
14 consumers simply don't read footnote disclaimers.

15 Q. Now, when we go to pull the record in the
16 U-Haul case, are we going to find that U-Haul had some
17 footnote disclaimers?

18 A. I don't believe so. I don't recall.

19 Q. You wouldn't have testified differently in the
20 U-Haul case than you would here about footnote
21 disclaimers; right?

22 A. No, I wouldn't.

23 Q. So based upon your view that consumers don't
24 read footnotes, you decided not to even put that before
25 the viewer of Survey 3; correct?

1 **PROOF OF SERVICE**

2 TrafficSchool.com, Inc. v. Edriver, Inc. - File No. 25162-14

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 At the time of service, I was over 18 years of age and not a party to the action.
5 My business address is . I am employed in the office of a member of the bar of this
6 Court at whose direction the service was made.

7 On November 12, 2007, I served the following document(s):

8 **PLAINTIFFS' COUNTER-DESIGNATIONS TO DEFENDANTS'**
9 **DEPOSITION DESIGNATIONS OF CROSS EXAMINATION OF DR.**
10 **MARONICK**

11 I served the documents on the following persons at the following addresses
12 (including fax numbers and e-mail addresses, if applicable):

13 Brian M. Daucher, Esq.
14 Joseph H. Tadros, Esq.
15 Amy Merlo, Esq.
16 SHEPPARD MULLIN RICHTER & HAMPTON
17 650 Town Center Drive, 4th Floor
18 Costa Mesa, California 92626-1925
19 Telephone: (714) 513-5100
20 bdaucher@sheppardmullin.com
21 jtadros@sheppardmullin.com
22 amerlo@sheppardmullin.com

23 The documents were served by the following means:

24 [X] (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order
25 or an agreement of the parties to accept service by e-mail or electronic
26 transmission, I caused the documents to be sent to the persons at the e-mail
27 addresses listed above. I did not receive, within a reasonable time after the
28 transmission, any electronic message or other indication that the transmission
was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

Executed on November 12, 2007, at Los Angeles, California.


Mina Hamilton